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Federal Communications Commission
Attention: Commission Secretary
1919 M Street, N. W.
Washington, D.C. 20554

In Re: MM Docket No. 87-268; Informal Comments in
Objection to Reallocation of TV Channels 2-6 and 52-69;
Informal comments pertaining to LPTV services.

To the Commission:

This letter responds to recent information conveyed to me from the President of the Community Broadcasters Association, Mr. Sherwin Grossman, of Miami, Florida. In his memorandum, he states that the Commission is considering the reallocation of TV Broadcast Channels 2-6 and 52-69, with Channels 60 - 69 to be reallocated within the "near term future." Mr. Grossman alleges that the Commission's suggested reallocations would be for the ostensible purpose of auctioning that spectrum to "other users." If, in fact, what he says has any truth to it, I would like the Commission to consider the following comments prior to taking further action.

ISSUE NO. 1 - Low Power TV Broadcast Industry

(1) SHARE-TIME LICENSING OF LPTV STATIONS:

Ordinarily, if a full power television station permittee obtains a construction permit (CP) for a channel which is already occupied by a pre-existing LPTV Station, the full power TV (FPTV) station must notify the LPTV broadcaster in writing of their intent to begin station operation under Program Test Authority. This has the effect of displacing the LPTV station until the LPTV guy files an application for change of channel (a technical challenge these days, when you consider the co-channel and adjacent channel separation requirements).

However, most FPTV stations do not operate twenty-four hours per day. Accordingly, when the FPTV Station is not operating, that segment of the spectrum is being wasted, and the LPTV Station owner should be permitted to remain on that channel during times of the broadcast day in which the FPTV station is not operating. This would permit a more efficient utilization of the electromagnetic spectrum, and would serve as an alternative to complete displacement. Accordingly, instead of granting FPTV Stations "carte blanche" when they apply for their licenses concurrent with program test authority, the Commission should consider whether or not the FPTV Station is genuinely interested in serving the public interest, convenience, and necessity, by more efficient use of the electromagnetic spectrum through a share-time licensing arrangement with the LPTV Station during those hours of the broadcast day in which the FPTV Station is not operating.

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This would obtain 24 hour per day utilization of the channel, by licensing the daytime operation on a given channel to the Full Power TV Station, and when it is not operating at night, the Low Power TV Station can act as a "stop-gap" measure, serving their community's needs at night, assuming this is the time-division agreed to by each such station's respective managements. Once the agreement had been reduced to a written contract or memorandum of understanding, and filed with the Commission, in triplicate, as required per 47 CFR § 73.1715, the Full Power and Low Power Television Stations would each share the same channel during different times of the day.

Bearing in mind that I am from the midwest part of the United States, during particular times of the spring and summer months, I have to rely upon TV to provide me with weather reports during severe thunderstorms. If a Full Power TV Station operating 18-20 hours per day takes a channel away from a Low Power TV Station operating 24 hours per day, there are 4-6 hours at night (it's almost always at night when stations discontinue operation) in which I have no reliable source of weather information, and if a tornado blows me away during those hours because I had no advance warning, the Commission's going to be held responsible for displacing a 24 hour LPTV Station with a part-time FPTV Station. This is no laughing matter, it has happened to other people already!

Accordingly, before just rubber-stamping the license application of a Full Power TV Station displacing a Low Power TV Station, check and see if they've come to some sort of share-time licensing agreement. I think it's a fair bet to say that a lot of LPTV Station operators don't even know that they can negotiate with Full Power Station operators for share-time licensing and stay on their channel. While this doesn't solve the problem of Full Power TV Stations that are on the air 24 hours a day, such stations are usually in the minority. With digital TV soon to be a reality, this is an effective alternative to completely displacing LPTV Stations occupying channels which will be needed for Full Power TV digital broadcasters who don't intend to offer the public a full 24 hour per day broadcast service...not to mention that the LPTV guy who's on at night under a share-time license with the FPTV digital broadcaster will offer the public a service where none exists for members of the public who still haven't been able to purchase digital television receivers. This is effective and efficient spectrum management, and promotes the public interest, convenience, and necessity in conserving our spectrum resources - after all, the alternative is that the LPTV operator will have to get a whole new channel, and now you've got two channels used, when a little share-time arrangement could have left that second channel available.

The practical effect of this beforementioned share-time licensing arrangement also affords the LPTV Station some protection. After all, under a share-time licensing arrangement with the Full Power TV Station, what's the real likelihood that the LPTV Station operator will ever face displacement from another Full Power TV Station? Not good.

In short, share-time licensing of both Full Power TV and Low Power TV Stations which would ordinarily require the Low Power TV Station to be displaced solves the following problems:

(1) If the Full Power TV Station operates from the hours of 6 AM to 1 AM local time, the Low Power TV Station can remain on that channel during the hours of 1 AM to 6 AM local time, in lieu of applying for an entirely new channel, if the managements of both such stations agree on this time division. In the vast majority of the cases, this would resolve an awful lot of conflict, as most Full Power TV Stations don't offer 24 hour per day broadcast services for financial reasons. In fact, this could alleviate the call-sign assignment burden on the FCC too: for instance, if the call letters of the pre-existing LPTV Station were WXXX-LP, the Commission could assign the Full Power TV Station the call letters WXXX-TV, or vice versa.

(2) This promotes efficient use of a precious spectrum resource.

(3) This leaves an analog station on the same channel with a digital (or possibly digital conversion from analog), while the public is changing over to the digital format.

(4) The Full Power TV Station just "getting on the air" obtains some of the goodwill from the LPTV Station's previous daytime use of the channel, while at night, the LPTV Station that opted for a share-time license would later on down the road obtain the Full Power TV Station's goodwill for nighttime commercial sponsorship. In short, the share-time arrangement is mutually advantageous for both stations.

(5) If, during the hours the Full Power TV Station is not operating, there is severe weather or news of significant public impact, the share-time Low Power Television broadcaster can still meet those public needs.

(6) It's the right thing, politically, to do when the alternative is just going to raise a bunch of first amendment issues and wind up holding our federal courts hostage for the next fifteen years. As part of the regulatory changes recommended already by the Commission under this docket, go ahead and amend the Commission's rules at Subsection (f) of Section 73.1620 to authorize LPTV Stations and Television Translator Stations to continue operating on channels assigned concurrently to a Full Power TV Station when that Full Power TV Station is not broadcasting. This way, when the Full Power TV Station notifies the LPTV Station that it is beginning program tests on that channel, the LPTV Station can continue operating during times of the day that the Full Power TV Station is not operating. If, after the LPTV Station receives the notification of the Full Power TV Station's commencement of program testing the respective managements of those stations arrive at a share-time arrangement, make that part of their respective licenses, pursuant to Section 73.1715 of the Commission's rules.

(7) This offers some protection to the LPTV Station that would otherwise be displaced.

(2) NON-DISPLACED LPTV STATIONS:

For LPTV Stations that would not be displaced by Full Power TV Stations (digital or otherwise), the Commission should give those stations the same consideration in the allocation of the digital television spectrum as it would give to any other form of media. The "secondary" status of LPTV is only relative to the Full Power TV service; accordingly, in situations where LPTV operators serve a community which is not served by Full Power TV Stations, or that is selected by the LPTV operator on the basis of co-channel and adjacent channel interference criteria in such a way that there is no reasonable likelihood that a Full Power TV Station could acquire that channel, the secondary status simply doesn't apply.

"Primary", "Co-Primary", or "Secondary" allocation status designations in the Commission's rules and regulations were never intended to be taken into consideration when allocating spectrum essentially served in the same manner unless and until there is both a primary and a secondary station within close proximity and intended to be on or near the same channel - otherwise the designations are irrelevant in the regulatory planning of the Commission.

Furthermore, for those LPTV Stations who accept the share-time licensing provisions just previously discussed, those stations are, in practical effect, primary stations. After all, there is no real chance that another Full Power TV Station serving the same community will be assigned to an adjacent channel, and at the same time, be a twenty-four hour per day station; accordingly, the share-time licensing arrangement puts the LPTV nighttime operator on a par with the Full Power TV Station with which it is sharing its channel. If that channel is subsequently used by the Full Power TV Station for digital TV broadcasting, it should be no problem for the Commission to go ahead and permit the LPTV operator to change its analog format to digital, whenever it is prepared and capable technically to do so.

In either of the foregoing two sets of circumstances, there is no reason for the Commission to consider the primary or secondary status of any service. If the station in the secondary service is not going to be displaced in the first place, it should have the same first amendment opportunity and right to be assigned as a digital station, as would a station in the primary service. If the station in the secondary service reaches a time-share licensing arrangement with a co-channel station in the primary service, the secondary station is going to be, in practice, protected by that primary station from further encroachments, so it should likewise be permitted to become a digital station. In either situation, the station in the secondary service is no less entitled to convert to digital operation than a station in the primary service.

These foregoing two methods of arranging for the allocation of digital television spectrum will apply in the vast majority of cases, thus continuing to permit Full Power TV Stations and LPTV Stations to co-exist in both an analog and digital environment.

(3) DISPLACED LPTV STATIONS WITHOUT SHARE-TIME LICENSES:

In the rare exception of cases, LPTV Stations will face displacement from assignment of the same channel to a twenty-four hour per day Full Power TV Broadcast Station. Since this should be a small minority of situations, there should be no significant spectrum burdens which would pose problems to reassignment of that LPTV Station to another channel. However, the Commission should be particularly sensitive to the needs of LPTV operators who are displaced and cannot be relocated to another channel. In this instance, the LPTV operator should be permitted to negotiate with the management of a Full Power TV Station that is not on the air twenty-four hours per day. In this way, the displaced LPTV Station could be assigned on the same channel as a Full Power TV Station that does not operate twenty-four hours a day, to "cover" those parts of the broadcast day in which the Full Power TV operator is not operational.

To date, after a very thorough review of the Table of Allotments at Section 73.606 of the Commission's rules, and a survey of the Full and Low Power TV services, I cannot find a situation where an LPTV Station would be faced with the situation in which it could not either be re-assigned to a new channel, share a channel with a part-time Full Power TV Station, or be covered by the foregoing two alternatives; accordingly, it would be a rare day, indeed, when a Low Power TV Station would have to go dark completely. However, the Commission needs to change its rules and regulations to permit LPTV Station applicants to file for permits and licenses on the same channels that Full Power TV Stations occupy, but are not using twenty-four hours per day - this way, everyone's pains are alleviated, and the TV Broadcast spectrum is better managed and more effectively utilized. Full Power TV Stations, irrespective of their primary status, that don't have 24 hour broadcast services, shouldn't monopolize channels 24 hours a day when that part of the broadcast day can be allocated to an LPTV Station which would otherwise go displaced.

In this manner, the Commission may designate channels within the TV broadcast spectrum to digital television without considering whether the stations using those channels are either Full Power TV or Low Power TV. In the eyes of the Commission, and in the eyes of the public, the use of those channels is identical. If a full power operator later comes along and wants a channel currently occupied by a low power operator, then and only then does the secondary status of the low power operator have any regulatory significance, and then only in the instance the full power operator genuinely uses the channel for a full twenty-four hours per day.

(4) ACCOMPLISHMENT OF THE FOREGOING:

Bearing in mind the foregoing comments, in considering the allocation of Digital Television and Advanced Television channels and spectrum, the Commission could meet the needs of both the Full Power TV Broadcast service and Low Power TV Service, by changing the following regulations:

(a) 47 C.F.R. § 73.1620 - Add as Subsection (h) thereto, as follows: "The permittee of a Full Power TV Station assigned to the same channel as a preexisting Low Power TV Station shall notify the Low Power TV Station, in writing, at least ten (10) days prior to commencing operation under program test authority, pursuant to Subsection (f) of this Section. In that notification, the Full Power Television Station permittee shall identify specifically its regular hours of operation, and with particularity those hours of each broadcast day that it does not intend to be in operation. So long as no objectionable interference is caused thereby, the Low Power Television Station will be permitted to continue operation during those times of each broadcast day that the Full Power TV Station is not operating concurrently on the same channel during program testing."

(b) 47 C.F.R. § 73.1705 - Add as Subsection (d) thereto, as follows: "Low Power TV Stations will be permitted to continue operating on channels subsequently assigned to Full Power TV Stations during those times of each broadcast day in which the Full Power TV Station is not operating, in lieu of applying for a change of channel. When a newly licensed Full Power TV Station is assigned a channel which is previously assigned to a Low Power TV Station, the license of the Low Power TV Station will be modified automatically to reflect that the Low Power TV Station is to operate on a share-time basis in accordance with Section 73.1715 of this Chapter during those times of each broadcast day that the Full Power TV Station concurrently assigned to that channel is not operating, unless and until the Low Power TV Station licensee applies to the Commission for a change of channel. Upon acceptance by the Commission of an application for a change of channel from a Low Power TV Station concurrently sharing a channel with a Full Power TV Station, the Low Power TV Station will be permitted to continue operating, on the foregoing share-time basis, on its then currently assigned channel until the Commission has taken action upon the application."

(c) 47 C.F.R. § 73.1715 - Add as Subsection (f) thereto, as follows: "Notwithstanding an agreement between the licensee of a Full Power TV Station and the licensee of a Low Power TV Station, in accordance with Subsection (a) hereinabove to the contrary, whenever a Full Power TV Station begins operating under Program Test Authority pursuant to Section 73.1620 of this Chapter, the Low Power TV Station licensee shall monitor the Full Power TV Station's use of the channel to which both are concurrently assigned, and shall be permitted to operate on that channel, on a share-time only and non-interference basis, during those times in which the Full Power TV Station does not transmit a signal. Should a Full Power TV Station licensee and Low Power TV Station licensee come to an agreement for share-time operation on the same channel, in accordance with Subsection (a) hereinabove, the terms of that agreement shall be part of their respective licenses, and all of the remaining provisions of this Section shall apply thereto."

(Continuation of Proposed Regulatory Modifications)

(d) 47 C.F.R. § 74.763 - Modify Subsection (c) thereof, as follows: Add the following sentence: "In the Commission's exercise of the foregoing discretion, if a Low Power TV Station is assigned to a channel which is subsequently assigned to a Full Power TV Station operating 24 hours per day, the discontinuation of operation by the Low Power TV Station will not result in cancellation of the Low Power TV Station's license during the pendency of the Commission's consideration of its application for a change in channel assignments, provided the application therefor is filed with the Commission on or before the thirtieth day next following the actual discontinuation of operation. For the purposes of this Section, operation of the Low Power TV Station on a share-time basis in accordance with Subsection (f) of Section 73.1715 of this Chapter will not be deemed a discontinuation of operation, whether or not an application for change of channel is filed with the Commission."

(e) 47 C.F.R. § 74.763 - Add as Subsection (e) thereto, the following: "A Low Power TV or Television Translator Station may continue to operate on a channel concurrently assigned to a Full Power TV Station during times in which the Full Power TV Station is not emitting a signal, if and only if that Low Power TV or Television Translator Station preexisted the Full Power TV Station."

(f) Add as 47 C.F.R. § ~~74~~.785, the following: "(a) Displaced Low Power TV and Television Translator Stations may apply to the Commission for a change of channel to the same channel assigned currently to a Full Power TV Station, during those hours of the broadcast day the Full Power TV Station is not operating, on a share-time basis, if the licensee of the displaced Low Power TV or Television Translator Station is unable to select a suitable channel in which objectionable interference will not be caused and which is not assigned to another Low Power TV, Full Power TV, or Television Translator Station, provided that the applicant for change of channel files with its application an agreement executed by the respective managements of the Full Power TV and Low Power TV/Television Translator Station, evidencing their agreement thereto."

(b) In the same manner as is specified in Subsection (a) hereinabove, a displaced licensee of a Low Power TV or Television Translator Station, may apply to the Commission for a change of channel to a channel then currently assigned to another Low Power TV or Television Translator Station, for share-time operation by both such stations on that channel in accordance with an agreement executed by their respective managements and filed with the Commission with the application for change of channel."

ISSUE NO. 2 - Reallocation of TV Channels 2-6 and 52-69

(1) ORIGINAL TELEVISION BROADCAST SPECTRUM ALLOCATIONS:

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Originally, the TV Broadcast Channels were 2-83. Thereafter, the Commission prohibited the use of TV Channel 37, and reallocated UHF TV Broadcast Channels 70-83 to the land mobile service. Therefore, originally, TV Broadcasting enjoyed a 492 MHz swath of the spectrum. When TV Channel 37 and Channels 70-83 were taken away, we lost 90 MHz of that spectrum, to reach our current status of 402 MHz of spectrum. This represented, at that time, a reduction in our service capacity to 81.7% of what it was originally.

(2) CURRENT SPECTRUM PROPOSALS BEING CONSIDERED:

Currently, the Commission would appear to be considering the reallocation of Channels 60-69 in the short term future, and Channels 2-6 and 52-59 in the long-term future. That would leave the TV and LPTV Broadcast Services with a scant 264 MHz, and represent a service capacity of 53.7% of its original. In considering these spectrum issues, the Commission would be reallocating that spectrum to "other users" and auctioning that spectrum, without taking into consideration that those spectrum resources could be used by those "other users" without any reallocations.

(3) ALTERNATIVE TO REALLOCATING TV BROADCAST SPECTRUM:

The TV Broadcast services currently enjoy unfettered use of their Vertical Blanking Intervals and SCA. If another user wishes to have access to this spectrum, it need only contact a local television station, purchase the equipment needed to operate on the VBI/SCA, and come to an agreement with the management of that station. Thereafter, a license would be applied for, pursuant to 47 CFR § 73.646, with or without an auction.

Signed  JAMES EDWIN WHEOBEE
October 1, 1996